

Bonacini (Migration) [2023] AATA 1942 (18 May 2023)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Ettore Bonacini
VISA APPLICANTS:	Mrs Jovita Beltran Bonacini Mr John Paul Beltran Singian Mr Allan Jonathan Beltran Singian Ms Marie Antonette Beltran Singian
CASE NUMBER:	1902552
DIBP REFERENCE(S):	BCC2017/3901588
MEMBER:	Deputy President J.L Redfern PSM
DATE:	18 May 2023
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the applications for Partner (Provisional) (Class UF) visas for reconsideration, with the direction that the first named visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa: • cl.309.211 of Schedule 2 to the Regulations; and • cl.309.221 of Schedule 2 to the Regulations.

Statement made on 18 May 2023 at 1:38pm

CATCHWORDS

MIGRATION –Partner (Provisional) (Class UF) visa - subclass 309 – couple view their relationship as a long-term one – Tribunal is satisfied their relationship is a genuine and continuing relationship – longevity of their relationship –parties are validly married – marriage is valid for the purposes of the Act– applicants have established a joint household and share domestic responsibilities – parties are committed to one another – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5F, 65, 360

Migration Regulations 1994, rr 1.15, Schedule 2, cls 309.211, 309.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 18 January 2019 to refuse to grant the visa applicants Partner (Provisional) (Class UF) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named visa applicant, Mrs Jovita Beltran Bonacini (the visa applicant), applied for the visa on 7 September 2017 on the basis of their relationship with her sponsor, the review applicant, Mr Ettore Bonacini. Her dependent children, the second, third and fourth named applicants, were included as secondary applicants. The review applicant seeks review of the delegate's decision.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211 of Schedule 2 to the Regulations because the delegate was not satisfied that she was the 'spouse' of her sponsor at the time of the application due to insufficient evidence.
4. The visa applicant and the review applicant provided further information to the Tribunal in support of their claims in 2019. In January 2023 the Tribunal undertook outreach to obtain updated information, which was provided in February 2023. As a result of this outreach the review applicant provided updated financial information, a detailed statement from the review applicant about their joint living and financial arrangements and details of property jointly owned by the visa applicant and the review applicant.
5. In reaching its decision the Tribunal did not consider a hearing to be necessary, as it was able to find in favour of the visa applicant on the basis of the material before it, pursuant to s 360(2)(a) of the Act.
6. For the following reasons, I have concluded that the matter should be remitted for reconsideration.

RELEVANT LAW

7. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
8. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.
9. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's

and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

CONSIDERATION OF CLAIMS AND EVIDENCE

10. The issue in the present case is whether visa applicant was the spouse of her sponsor at the time of the application and whether she continues to be so at the time of this decision.
11. The visa applicant is a 56-year-old national of the Philippines. She was married in 1996 but separated from her previous husband and they subsequently divorced. She has three children from the previous marriage, who are 25, 22 and 18 years old. The review applicant is an Australian citizen. It is claimed that the visa applicant and the review applicant met in 2010 in Thailand through mutual friends. It is claimed that they committed to each other in 2012 and continued their relationship through frequent travel together and regular telephone calls. They married in December 2016. The visa applicant has resided with the visa applicant and her three children in the Philippines since 2017. They own property together in the Philippines.

Are the parties validly married?

12. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The applicant and sponsor were married 14 December 2016 in the Philippines and provided a copy of the marriage certificate. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

13. In assessing the financial aspects of the relationship, the delegate noted that the applicant had provided no documents about the financial aspects of their relationship. As such, there was no evidence of joint assets and liabilities, nor was there evidence of financial pooling. The delegate was not satisfied that the visa applicant and her sponsor were sharing or maintaining a joint household, nor was delegate satisfied that there was sufficient evidence of the social aspects of their relationship. Even though there was evidence that the visa applicant and the review applicant had lived together for several years, the delegate was not persuaded that the relationship was a committed, genuine and long-term relationship.
14. I have considered the evidence that was provided with the primary application but have also had the benefit of additional evidence that has been submitted to the Tribunal more recently. A summary of the evidence and my assessment about whether I am satisfied about the relationship is set out below.
15. Financial aspects
16. As noted in the delegate's decision, the applicant had provided no information in relation to the financial aspects of their relationship.
17. The following evidence was given to the Tribunal after the application for review was lodged and in response to the requests for further information made in January 2023:
 - A statement of account of a Philippines bank account showing the balance of the account between 2018 and 2019, in the joint names of the visa applicant and the review applicant.

- A copy of a certificate of title in respect of a unit in the Philippines. According to the review applicant, this unit is jointly owned by the visa applicant and the review applicant. While this is not entirely clear from the certificate of title, there is loan documentation from the PS bank referring to the visa applicant and the review applicant as the borrowers, identifying the property referred to in the certificate of title as the security. This suggests that the review applicant is a co-owner of this property with the visa applicant and is consistent with the statement provided by the review applicant in response to the Tribunal outreach in February 2023.
- Copies of term deposits in the joint names of the visa applicant and the review applicant dated February 2023.
- A statement from the review applicant, undated, which refers to financial arrangements between the applicants, stating that the review applicant's pension and the visa applicant's salary was paid into the joint account and groceries and utilities were paid from this account.

18. Having regard to this evidence, I accept that the visa applicant and the review applicant have pooled their financial resources and shared household expenses. I am also satisfied that the applicant and sponsor have joint ownership of assets and joint liabilities. This is strongly indicative of a spousal relationship.

19. Nature of the household

20. According to a statement provided by the review applicant, he and the visa applicant share the household duties and he has a role with the visa applicant's adult children, including assisting two of her sons by giving them a monthly allowance.

21. Based on the available evidence provided, I am satisfied that the applicants have established a joint household and share domestic responsibilities.

22. Social aspects of the relationship

23. At the time of the application, the applicants provided statements from the visa applicant's brother, and from a friend of the applicants, attesting to their opinion that the relationship between the visa applicant and the review applicant was genuine and ongoing.

24. The applicant also provided photographs of them in various social settings together, including more recent photos of the review applicant with the visa applicant at a friend's wedding and with the visa applicant's children.

25. As such, there is evidence of the applicants undertaking joint social activities together. I also accept that there is evidence before the Tribunal that the relationship between the visa applicant and the review applicant is known to friends and family and is socially recognised.

26. Nature of persons' commitment to each other

27. The applicant and sponsor have been married for over six years and, according to evidence provided, they have known each other for approximately 13 years.

28. At the time of the application, the visa applicant and the review applicant provided statements setting out details about their relationship including, how they came to marry in 2016.

29. Updated statements were provided in 2019 and more recently in 2023 explaining the degree to which the applicants have integrated the financial and social aspects of their lives, how the review applicant has taken on a fatherly role with visa applicant's biological children, and how important the review applicant considers the visa applicant to be in his life. The review applicant states that he wishes to return to Australia to live but cannot do so without the visa applicant.
30. The fact that the review applicant has lived in the Philippines for so many years while waiting for the visa to be approved demonstrates his commitment to the relationship.
31. Based on the information provided, including the longevity of their relationship, I am satisfied that the visa applicant and the review applicant provide each other with companionship and emotional support and that they view the relationship as long term.
32. There is no evidence to suggest that this relationship is not genuine or is contrived and, based on all the available evidence, I am satisfied that the visa applicant and the review applicant have a mutual commitment to shared life to the exclusion of others. I am therefore satisfied their relationship is genuine and continuing and there is no evidence that they live separately and apart on a permanent basis.
33. Conclusion
34. On the basis of the above I am satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
35. Accordingly, I am satisfied the visa applicant meets cl.309.211 and cl.309.221.
36. As the delegate found cl.309.311 was not met by the second, third and fourth named applicants on the basis that the first named applicant did not meet cl 309.211, the appropriate course is for the Tribunal to also remit the second, third and fourth named applicants for reconsideration in light of the Tribunal's findings in relation to the first named applicant.
37. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 309 visa.

DECISION

38. The Tribunal remits the applications for Partner (Provisional) (Class UF) visas for reconsideration, with the direction that the first named visa applicant meets the following criteria for a Subclass 309 (Partner (Provisional)) visa:
- cl.309.211 of Schedule 2 to the Regulations; and
 - cl.309.221 of Schedule 2 to the Regulations.
- 39.

J.L Redfern PSM
Deputy President

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).